UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, Plaintiff, - against - UNITED STATES DEPARTMENT OF DEFENSE, Defendant.	Index No. 05 CV 5468 (JSR) STIPULATION AND ORDER

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ______
DATE FILED: ______

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this action, by and through their undersigned counsel of record, as follows:

1. This action by the Associated Press (AP) seeks to compel defendant United States Department of Defense (DOD) to comply with obligations imposed under the Freedom of Information Act, 5 U.S.C. §§ 552, *et seq.* (FOIA), and to produce documents requested on an expedited basis by AP on November 16, 2004 and January 18, 2005.

2. DOD agrees to address the AP FOIA requests at issue in this lawsuit as follows:

Requests submitted on November 16, 2004:

a. "Copies of documents sufficient to identify each disciplinary action initiated since January 2002 as the result of an allegation of mistreatment at Guantanamo Bay, Cuba, including but not limited to the date the action was initiated, the name of the troop(s) charged, the status of the action, and a description of any disciplinary action recommended or taken"

On June 24, 2005, after the close of business, DOD produced 287 pages that it believes are responsive to this request. DOD agrees to process additional responsive documents to AP by no later than close of business on July 22, 2005. If DOD's response is

Dockets.Justia.com

not complete as of July 22, 2005 it will provide by no later than August 5, 2005 a status report and a firm date by which all responsive documents will be processed.

b. ***"Copies of documents sufficient to identify each allegation of detainee-against-detainee abuse at Guantanamo Bay, Cuba, since January 2002, including a description of the alleged abuse and any action(s) taken in response"***

At the request of DOD, AP agrees initially to limit this request to allegations reported by military personnel to their superiors or to other components of DOD. With this limitation, DOD will initiate a search and process the first group of responsive documents by no later than August 5, 2005. By August 5, 2005 DOD will also report to the Court on the status of its search. Thereafter DOD will process groups of responsive documents every two weeks, and will provide to the Court a progress report on its search every two weeks after August 5, 2005. By no later than September 2, 2005 DOD will provide a firm date by which all responsive documents will be processed , or a detailed explanation why a deadline cannot be set.

c. "Copies of documents sufficient to identify the number of allegations of abuse at Guantanamo Bay, Cuba, since January 2002 that have been reported through the Combatant Status Review Tribunals"

DOD will process all documents called for by this request by no later than July 8, 2005.

d. "Copies of documents sufficient to identify the number of allegations of mistreatment committed by translators at Guantanamo Bay, Cuba, since January 2002, including a description of the alleged mistreatment and any action(s) taken in response"

Again, at the request of DOD, AP agrees initially to limit this request to allegations reported by military personnel to their superiors or to other components of DOD. With this limitation, DOD will initiate a search and process the first group of responsive documents by no later than August 5, 2005. By August 5, 2005 DOD also will provide a date by which all responsive documents will be processed, or a detailed explanation of why a deadline cannot be set.

e. "Copies of documents sufficient to identify the number of detainees transferred or released from Guantanamo Bay who had been treated for medical problems during their detention"

AP agrees to exclude from this request documents relating to routine physical examinations. With this limitation, DOD will process all documents called for by this request by no later than July 22, 2005.

f. "Copies of documents sufficient to identify each construction contract relating to work performed at Guantanamo Bay, Cuba, since January 2002, including the name of the contractor, the contract amount, and a description of the services to be provided."

DOD has indicated that the release of specific contracts may require a notice and an opportunity for the contracting party to object to the release of sensitive commercial information. In an effort to expedite an initial response, DOD will provide to AP by no later than July 22, 2005 a summary document listing the name of the contractor, the contract amount and a brief description of the services provided, for each contract entered into since January 2002 relating to work performed at the U.S. Naval Base, Guantanamo Bay, Cuba.

Requests submitted on January 18, 2005:

g. "Transcripts of all testimony given at the Administrative Review Board hearings at [Guantanamo]"

DOD will process all documents called for by this request by no later than July 8, 2005.

h. ***"Copies of all written statements provided by any detainee"***

DOD will process all documents called for by this request by no later than July 8, 2005.

i. ***"Copies of all documents that have been provided by any detainee . . . to their assigned personal representatives, including reasons they furnish should they decide not to attend their Administrative Review Board hearings"***

There are no "personal representatives" in proceedings of the Administrative Review Boards, but DOD is construing this request to seek any documents provided by a detainee to his assisting military officer (AMO). With this understanding, DOD will process all documents called for by this request by no later than July 8, 2005.

j. ***"Copies of any affidavits submitted by witnesses to the Administrative Review Boards, including that of medical personnel"***

DOD represents that it has no documents responsive to this request.

k. ***"Copies of the allegations against the detainees being held in Guantanamo Bay"***

DOD represents that it does not prepare the equivalent of a criminal complaint or indictment, but does provide each detainee with a document stating the basis for his detention as an "enemy combatant." DOD will process by no later than July 8, 2005 these statements that were provided to each detainee who has been the subject of an Administrative Review Board proceeding.

l. ***"Details and explanations of the decisions made to release or transfer detainees, including the reason why the decision was made.***

DOD will process all documents called for by this request no later than July 8, 2005.

3. AP has agreed to withdraw without prejudice its November 16, 2004 request seeking copies of "all documents containing any allegations or accounts of mistreatment by U.S. military personnel at Guantanamo Bay, Cuba, since the detention mission began in January 2002".

4. DOD's commitment to produce documents requested by AP is in each instance subject to its right to redact or withhold specific documents in a manner consistent with the statutory exemptions in FOIA. As used herein, to "process" a responsive document means that by the date specified DOD shall have obtained, reviewed and acted upon the document by either (a) releasing it to AP in full, (b) releasing it to AP with redactions, (c) determining to withhold it pursuant to a FOIA exemption, or (d) referring it to an agency outside DOD for final determination. DOD will identify to AP any documents withheld in their entirety and state the basis under FOIA for withholding, and will identify by category to AP with as much particularity as allowed by law any document referred to another agency for a final determination.

5. AP reserves its right to challenge any specific redaction or withholding of a document by DOD.

6. In those cases where a request seeks "documents sufficient to identify" a piece of information, DOD need not produce documents whose information on the subject matter requested is purely duplicative and cumulative of information contained in another document that is being produced.

7. Defendant's time to answer, move or otherwise respond to the Complaint shall be extended to and including August 31, 2005.

Dated: June 29, 2005
New York, NY

LEVINE SULLIVAN KOCH &
SCHULZ, L.L.P.

By: David Schulz (by EW)
David A. Schulz (DS-3180)
Ashley I. Kissinger
230 Park Avenue, Suite 1160
New York, NY 10169
t: (212) 850-6100
f: (212) 850-6299

Attorneys for Plaintiff

DAVID N. KELLEY
United States Attorney for the
Southern District of New York

By: Elizabeth Wolstein
Elizabeth Wolstein (EW-5194)
Assistant United States Attorney
86 Chambers Street
New York, NY 10007
t: (212) 637-2743
f: (212) 637-2686

Attorneys for Defendant

SO ORDERED.

Jed S. Rakoff
U.S.D.J.
7-1-05